IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7755 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GANGABEN N PANDYA WD/O BRIJLAL MISHRA - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR MP PRAJAPATI with MR Heman Joshi for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,3 - 5.
MR PRANAV G DESAI for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 19/12/2005

ORAL JUDGMENT

1. The petitioner has filed this petition under Article-226 of the Constitution of India, seeking declaration from this Court that the action of the respondent Nos.1 and 2 is illegal, malafide, capricious and arbitrary of not appointing the petitioner on permanent post and terminating her service orally despite the fact that the petitioner stands at Sr.No.23 in selection list and appointing Shri Maganbhai, Shri Ashokbhai and Shri Kantilal, though they were juniors to the petitioner in selection list.

2. The petition was admitted by this Court. Notice was issued by this Court on 21.10.1997. an affidavit in reply was filed on behalf of the respondent on 31.12.1997. This Court has passed an order on 12.8.1998, wherein it was observed that life of the select list is valid upto 31.3.1997 and further observed that

certain appointments have been made after 31.3.1997 from waiting list but the same have been made against the sanctioned post. The Court further observed that if this select list discloses the fact that the selection list is in operation, the respondent Bank has to take a stand that either all the appointments after 31.3.1997 are illegal or the petitioner is to be given appointment as per the seniority. The Court further observed that the appointments are given from the waiting list. The select list has been given an unusual long life of about 9 years. This sort of practice in the Bank is not good and deprecated. The matter was, thereafter, adjourned. This Court, thereafter, admitted the petition and rule was issued on 22.1.1999.

3. It is the case of the petitioner that the petitioner had joined the respondent's Branch

at Dahod in 1983 and she was working as work-woman, water-woman messenger. She was also assigned duties in canteen when it was necessary. She had performed her duties honestly, faithfully and deligiently for which she was given certificate of her presence. In 1989 the respondent No.1 had started to take interviews for recruitment of subordinates staff and the petitioner was also invited for the interview by letter dated 26.7.1989. The petitioner was interviewed and she was given number 23 in the selection list. Though the petitioner had put on 86 days of service and she was given number 23 in selection list and though she was also put in special category of widow she was not given appointment and persons below her in the select list have been given appointment. She has specifically mentioned name of one Shri Maganbhai Gamjibhai Bhabhore, whose number was at Sr. No.24 and who had put

in 80 days of service and was appointed on 30.3.1997. She has also given name of one Shri Kantibhai, who has been appointed on 15.4.1997 on permanent basis in the same Branch where the petitioner was working as water-woman. She has also given name of one Shri Ashokkumar, who was relative of the Branch Manager and he has been appointed on permanent basis and who was at Sr.No.54 on the selection list. It is further stated that instead of giving appointment to the petitioner on permanent basis, the petitioner's services were orally terminated with effect from 1.5.1997.

4. Being aggrieved by the said action of the respondent Bank, the present petition is filed before this Court invoking the writ jurisdiction under Article 226 of the Constitution of India.

5. Mr.M.P.Prajapati, learned advocate appearing for the petitioner submitted that the action of the respondent Bank is absolutely unjust, illegal contrary to the settled legal position and violative of Articles 14, 19 and 21 of the Constitution of India. The petitioner was interviewed and selected and put on selection list at Sr. No.23. The petitioner was, therefore, entitled to be on permanent post. Despite this fact juniors to the petitioner in the selection list have been given appointment and hence the action of the respondent Bank is malafide and amounting to victimization and unfair labour practice. He has, therefore, submitted that the respondent Bank may be directed to absorb the petitioner on permanent post, as her juniors were appointed by the respondent Bank.

6.An affidavit in reply is filed on behalf of the

respondent Bank. Mr.Pranav G. Desai, learned advocate appears on behalf of the respondent Bank. Though the respondent Nos.3, 4 and 5 were duly served, no one appears on their behalf. They are the affected parties in whose favour the appointment orders were passed and petitioner challenged their appointments in the present petition.

7.It is the case of the respondent Bank that interviews were conducted by the respondent Bank for filling up the vacancies of Messenger for which the applications were invited from those persons, who had worked on temporary basis till 31-7-1988. The interviews were conducted in or around November, 1989 and the wait list / select list was prepared for giving appointment in the Bank service. The detailed procedure of preparing the wait list / select list was as under :-

(a) The overall list was prepared in descending order of number of days worked, that is, 100 to 1;

(b) When the number of days worked were found equal, the concerned candidate's name / candidates' names were arranged in alphabetic order;

(c) Those, who had worked for part time their names were shifted to the appropriate place by reducing proportionately the number of days worked, by applying the formula of 1/2 or 3/4th, in case of such part time employees, as the case may be.

8. It is further stated that so far as petitioner is concerned, the petitioner worked in the Bank as 3/4th part time employee on temporary basis and her number days of work was, thus, reduced proportionately by applying $3/4^{th}$ ratio. The petitioner had worked as a

temporary part time employee on temporary basis for total number of 86 days only and hence while arranging the petitioner's name in the wait list / select list, the ratio of 3/4th of the said days was required to be applied for reduction proportionately. It is further stated that the said wait list / select list was valid only concerning the posts sanctioned upto 31.3.1997. The last appointment was given to one Shri Rameshbhai Solanki on 8.5.1997 for the post, which has been sanctioned prior to 31.3.1997, that is well within the validity period of the wait list / select list. The said Shri Rameshbhai Solanki worked for 73 days. It is further stated that from 1.4.1997 the wait list / select list is no longer valid. The petitioner's number of days work, considering part time temporary days, was reduced proportionately and after applying the ratio of 3/4th it was much less than the number

of days of the person to whom the last appointment given. This person has worked for 73 days. It is also stated that no one who has put in same or less number of days of service than that of the petitioner, was appointed and the petitioner was not by-passed and, therefore, the present petition is misconceived and untenable and, therefore, the same is liable to be dismissed in limine.

9.It is further stated that there was no special category given in the wait list/ select list. There was only one list without making any special category. It is further stated in the affidavit that Shri Maganbhai Gamjibhai Bhil, had put in 87 days which are higher than the petitioner's number of days. So far as Shri Kantibhai Bariya is concerned, he has put in total 81 days and so far as Ashokkumar Chunilal is concerned, he has put in 77 days' service.

It is, therefore, stated that all the three persons had put in higher number of days service than that of petitioner considering the proportionate reduction being employed in the case of the petitioner. It is, therefore, submitted that there was no discrimination shown by the respondent Bank to the petitioner and since the wait list/select list came to an end on 31.3.1997 no further appointments were given. Only one appointment was given in respect of which the sanctioned was taken before 31.3.1997. It is, therefore, stated that all the averments and allegations made in the petition are absolutely untenable and without any substance.

10. The petitioner has filed affidavit in rejoinder denying the averments made in the affidavit in reply.

11. After having heard the learned advocates for the respective parties and after having gone through the facts stated and averments made in the petition, affidavit in reply as well as affidavit in rejoinder and after having considered the pleadings of the parties, the Court is of the view that neither of the parties have produced selection list before the Court. The petitioner has also not shown as to how the petitioner has been given Sr.No.23 in the select list. Certificate has been produced showing that she has put in 86 days service. The fact regarding part time service by the petitioner was denied and the respondent Bank has come out with the explanation that there is consistent policy whereby if the person concerned have put in part time service, proportionate reduction is always given by the Bank and accordingly it has been stated in the affidavit in reply that if 86 days are reduced

by 3/4th service put on by the petitioner, the number of days would come to 65 days, which in any case, are less than the number of the days of persons whose instances have been quoted by the petitioner in the petition. The respondent Bank has also come out with the fact that all the three persons named by the petitioner, have put on services of more number of days than the petitioner and they have been rightly selected to the post.

12. Considering the above facts, this Court is of the view that there is no irregularity or illegality committed by the respondent Bank while giving appointment to the other three persons, whose names have been mentioned by the petitioner in the petition. If they have put on service of more number of days, naturally they are selected. Even if it is assumed that the petitioner has been at Sr. No.23 and it is

found that the said serial number was wrongly given and some mistake was committed, the petitioner cannot take advantage of such mistake. Looking to the affidavit in reply, it becomes clear that the service of actual number of days of the petitioner is less than the number of days service put on by other three persons and hence the petitioner cannot claim any priority over these persons.

13. In the above view of the matter, the Court does not find any substance in the present petition and hence it is accordingly dismissed. Rule is discharged without any order as to costs.

(K. A. PUJ, J.)

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